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Remarks

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

Entry of this reply is considered proper. It is believed that the reply raises no new issues, does not require an additional search and/or places the application in a better condition for allowance and/or appeal.

Claim Rejections - 35 USC § 102 and § 103

Claims 17-22 are pending in the application. Independent claim 17 has been amended to recite, *inter alia*, "the battery power indicator is situated between a first layer and a second layer of the film and the first layer of film insulates the battery power indicator label from the dry-cell battery." As discussed more fully below, the cited references, taken alone or in combination, fail to disclose or fairly suggest the recited battery power indicator label. Accordingly, Applicant respectfully submits that all pending claims are now in a condition for allowance.

Claim 17 is directed to a battery power indicator for a dry-cell battery. As claimed, a base film includes a printed indicia layer, a layer of thermochromic material, a layer of electrically conductive material and pressure sensitive adhesive on one side. A label is formed by securing the first layer of the film, which substantially covers the entire circumference of the dry-cell battery, to the dry-cell battery with the pressure sensitive adhesive. As claimed, the length of the film exceeds the circumference of the battery by at least the width of the battery power indicator. This excess portion of the film is secured over the first layer of the film. The claimed battery power indicator is formed between the first layer, which insulates the battery power indicator from the battery, and the second layer of the film.

The primary reference U.S. Patent No. 5,760,588 to Bailey has been found to disclose a battery power indicator formed within the first layer of the base film. Bailey has not been found to teach or fairly suggest forming a battery power indicator between the first and second layer of the film, as set forth in Claim 17.

While Figure 7 of Bailey appears to illustrate a second layer of the film overlapping the first layer of the film, the overlapped portion has not been found to teach or fairly suggest placing the battery power indicator between the first and second layers of the film, wherein the first layer of the film insulates the battery power indicator

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from the dry-cell battery. For at least this reason, it is respectfully submitted that the Examiner's rejections of claims 17-20 under 35 U.S.C. § 102(b) should be withdrawn.

Since pending claims 18-22 depend from claim 17, they necessarily include all of its limitations including those not taught by Bailey. Therefore, like claim 17, claims 18-22, alone or in combination with the other cited art, does not anticipate or render obvious these dependent claims.

Furthermore, claim 22 was rejected under 35 U.S.C. §103(a) as being unpatentable over Bailey in view of Rackovan (U.S. Patent No. 6,436,496). The rejection over Rackovan is not valid under 35 U.S.C. §103(c). Rackovan qualifies as prior art only under 35 U.S.C. §102(e) and Rackovan and the present application were commonly owned, at the time the application was made, as indicated in the enclosed Statement Concerning Common Ownership. Therefore, Rackovan is believed to be disqualified as prior art under 35 U.S.C. §103(c). Accordingly, the rejection of claim 22 based on 35 U.S.C. §103(a) should be withdrawn.

Conclusion

In view of the foregoing, this application is now in condition for allowance and an early action to that effect is earnestly solicited.

Respectfully submitted,

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